

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219076
B-219123

DATE: November 25, 1985

MATTER OF: James F. Trusley III and James A. Patton

DIGEST: Two transferred employees who incurred loan origination fees of 1.5 percent are not entitled to reimbursement for more than the 1 percent fee allowed by the Veterans Administration. Survey of lending institutions in the Lexington, Kentucky area indicating that 73 percent charge loan origination fees equal to 1 percent of the loan amount confirms the Veterans Administration's determination that 1 percent is the customary loan origination fee.

Based on a survey of 11 lending institutions in the area, two employees of the Veterans Administration (VA) claim reimbursement for the 1.5 percent loan origination fee each paid to obtain a conventional mortgage.^{1/} We hold that reimbursement is limited to the 1 percent fee allowed by the VA since the survey confirms that the predominant rate charged for loan origination in the area was 1 percent of the loan amount.

BACKGROUND

Mr. James A. Patton was transferred from the Cleveland VA Medical Center, to the VA Medical Center in Lexington, Kentucky, on December 11, 1983. Mr. James F. Trusley III was transferred from the VA Medical Center, Cincinnati, Ohio, to the VA Medical Center, Lexington, Kentucky, on May 14, 1984. Each employee purchased a residence in the Lexington area in July 1984 and each paid a 1.5 percent loan origination fee to obtain a conventional mortgage from the University Mortgage Company. Mr. Trusley and Mr. Patton each submitted a claim for reimbursement of real estate purchase expenses which included the 1.5 percent loan origination fee.

^{1/} The Director, Office of Budget and Finance, Veterans Administration, requested decisions on the claims of Mr. Trusley and Mr. Patton.

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Although the local area office of the Department of Housing and Urban Development (HUD) was unable to furnish advice to the VA as to the customary loan origination fee charged in the area for other than FHA insured loans, Mr. Trusley and Mr. Patton were reimbursed loan origination fees of 1 percent. The VA has indicated that it considers 1 percent, the amount that can be charged in connection with FHA insured loans, to be a reasonable and customary loan origination fee in the absence of evidence to the contrary. Subsequent to the agency disallowance of his claim, Mr. Trusley prepared a questionnaire which was sent to 11 area financial institutions requesting information as to their charges for loan origination fees for both conventional and FHA/VA loans. For conventional mortgages, 8 of the financial institutions indicated that they charge a 1 percent fee. The remaining 3 reported charges of between 1.2 and 2 percent. We have been asked to determine whether, based on this information, Mr. Trusley and Mr. Patton are entitled to reimbursement for the additional 1/2 percent loan origination fee disallowed by the VA.

DISCUSSION

Under 5 U.S.C. § 5724(a)(4) (1982), an employee may be reimbursed for the expenses he incurs in selling and/or purchasing a residence pursuant to a permanent change of station. Effective October 1, 1982, the implementing regulations at paragraph 2-6.2d(1) of the Federal Travel Regulations (Supp. 4, August 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1984), were amended to permit reimbursement for loan origination fees and similar charges which were not specifically disallowed by FTR paragraph 2-6.2d(2). See Robert E. Kigerl, 62 Comp. Gen. 534 (1983).

Paragraph 2-6.2d(1) of the Federal Travel Regulations limits reimbursement for a loan origination fee to the amount customarily paid in the locality of the employee's new residence. We have held that an agency may rely on technical assistance provided by the local office of HUD in determining the customary loan origination fee for a given locality. Roger J. Salem, 63 Comp. Gen. 456 (1984), and Gary A. Clark, B-213740, February 15, 1984. The information provided by HUD creates a rebuttable presumption as to the prevailing loan origination fee charged in the area and is controlling in the absence of evidence overcoming that presumption. Christopher P. Jolly, B-217081, March 8, 1985; and Egbert H. Thompson and Sam Losoya, B-217603, B-217584, September 4, 1985.

The regulatory provision limiting reimbursement to those real estate purchase expenses, including loan origination fees, that are customarily charged in the locality of the employee's new duty station is required by the statute, 5 U.S.C. § 5724a(a)(4). A similar rule applies to reimbursement of broker's fees charged incident to the sale of an employee's residence at his old duty station. In the case of broker's fees we have held that information provided by HUD regarding the prevailing rate creates a rebuttable presumption which can be overcome by competent evidence demonstrating that a higher rate actually prevails. Edward M. Jones, B-208287, April 15, 1983, and David R. Hoffman, B-182431, July 14, 1975.

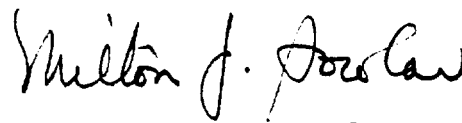
In B-173091, June 22, 1971 we allowed the reimbursement of a 7 percent rather than 6 percent real estate commission based on a survey of 30 area realtors showing that 70 percent were charging a commission of 7 percent. In contrast, we have held that a showing that a range of fees was charged does not provide a basis to reimburse any broker's fee within that range other than the dominant fee charged. Raymond L. Hipsher, B-214555, August 28, 1984, and Edward M. Jones, B-208287, supra. The rules enunciated with respect to brokerage fees apply, as well, to claims for reimbursement of loan origination fees. Gary A. Clark, B-213740, supra.

In the present case, the HUD area office was unable to furnish information as to the prevailing rate of loan origination fees charged for conventional financing in the vicinity of Lexington, Kentucky. For this reason and in the absence of other information indicating that a higher rate was customarily charged in the area, we believe it was appropriate for the VA to limit reimbursement to the 1 percent loan origination fee charged for FHA insured loans. As in instances where reimbursement is based on information furnished by HUD, the employee, nevertheless, may establish his entitlement to reimbursement at a higher rate by furnishing evidence that, in fact, a higher rate was customarily charged in the area of the residence purchased.

The evidence furnished by Mr. Trusley and Mr. Patton in support of their claims for reimbursement of a 1.5 percent rather than a 1 percent loan origination fee consists of a survey of 11 area financial institutions. Seven indicated that they charge a 1 percent fee; one reported that in addition to a 1 percent loan origination fee, it charges a "discount"; two indicated that they charge fees ranging from

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1.2 to 2 percent; and the employees were charged a 1.5 percent loan origination fee by their lender. Since a mortgage discount is a nonreimbursable fee distinct from a loan origination fee, the survey establishes that 8 of the 11 companies, or 73 percent, charge a 1 percent loan origination fee. Roger J. Salem, 63 Comp. Gen. 456. Thus, the survey does not refute, but confirms, the VA's determination that 1 percent is the loan origination fee customarily charged and it does not provide a basis to allow the employees' claim for a loan origination fee in excess of 1 percent. Accordingly, their claims for an additional .5 percent may not be paid.

for 
Comptroller General
of the United States